

ESTTA Tracking number: **ESTTA481862**

Filing date: **07/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050557
Party	Defendant Direct From Vegas Productions, Inc.
Correspondence Address	JACOB L HAFTER LAW OFFICES OF JACOB L HAFTER & ASSOCIATES 7201 WEST LAKE MEAD BOULEVARD, SUITE 210 LAS VEGAS, NV 89128 UNITED STATES jhafter@hafterlaw.com
Submission	Other Motions/Papers
Filer's Name	Jacob Hafter
Filer's e-mail	jhafter@hafterlaw.com
Signature	/s/
Date	07/05/2012
Attachments	Response to June 6 2012 Order w.signed Cert of Service.070512.pdf (19 pages) (431557 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

TRP ENTERTAINMENT, LLC, a Nevada
Limited Liability Company,

Petitioner,

vs.

DIRECT FROM VEGAS PRODUCTIONS,
INC., a California Corporation,

Respondent.

Cancellation No.: 92050557

Registration No: 3220387

Mark: DIRECT FROM VEGAS THE RAT PACK

FILED VIA ESTTA

REGISTRANT'S RESPONSE TO JUNE 6, 2012 ORDER

Respondent Direct from Vegas Productions, Inc. responds to the Board's June 6, 2012 Order. In the Order, the Board required the parties "to inform the Board of the status of the civil action which occasioned the suspension of this proceeding." Respondent has attached the Order on Summary Judgment, Order Denying Reconsideration and Denial of Partial Judgment as Exhibits "A" - "C" hereto.

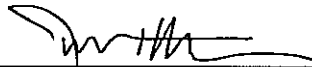
On September 28, 2009, the United States District Court entered summary judgment on behalf of Barrie Cunningham. In the Order, the Court stated that the issue before it was whether the term "The Rat Pack" is generic. See Exhibit "A" at 4. The Court held that "the term 'The Rat Pack' is generic in the context of live shows about or in tribute to members of the Rat Pack, TRP does not have an exclusive right to use the term "The Rat Pack." Id. at 7.

On December 14, 2009, the Court denied TRP's motion for reconsideration. See Exhibit "B." The Court stated that "'Rat Pack' is descriptive but incapable of attaining a further secondary meaning that identifies the source of the good or service as a person or entity other than the group of entertainers comprising Frank, Dean, Sammy, Joey, and Peter." Id. at 2.

The Partial Judgment states that "the term 'The Rat Pack' is generic in the context of live shows about or in tribute to members of the Rat Pack." Exhibit "C" at 2. Further, it states "the mere fact that any third party uses the term 'The Rat Pack' in connection with a Rat Pack tribute show does not and cannot infringe TRP Entertainment, LLC's Trademark Registration No. 2,640,066 for "THE RAT PACK IS BACK" and "TRP Entertainment, LLC cannot appropriate the term 'The Rat Pack' for its exclusive use." Id. The Court further required the USPTO to "rectify the Principal Trademark Register with respect to TRP Entertainment, LLC's Trademark Registration No. 2,640,066 for the mark THE RAT PACK IS BACK by entering a disclaimer upon said registration that NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE 'THE RAT PACK' APART FROM THE MARK AS SHOWN." Id. at 2.

DATED this 5th day of July, 2012.

LAW OFFICES OF JACOB HAFTER & ASSOCIATES



Jacob Hafter, Esq.
7201 W. Lake Mead Boulevard, Suite 210
Las Vegas, Nevada 89128
Counsel for Respondent

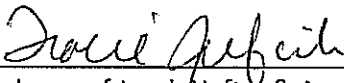
CERTIFICATE OF SERVICE

The undersigned hereby certified that a copy of this paper has been served upon all parties, at their address of record, by First Class Mail, on this date:

Michael D. Rounds, Esq.
Matthew D. Francis, Esq.
Watson Rounds
5371 Kietzke Lane
Reno, Nevada 89511

DATED this 5th day of July, 2012.

LAW OFFICES OF JACOB HAFTER & ASSOCIATES



Employee of Jacob Hafter & Associates

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

TRP ENTERTAINMENT, LLC, a Nevada
Limited Liability Company,

Petitioner,

vs.

DIRECT FROM VEGAS PRODUCTIONS,
INC., a California Corporation,

Respondent.

Cancellation No.: 92050557

Registration No: 3220387

Mark: DIRECT FROM VEGAS THE RAT PACK

FILED VIA ESTTA

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TRP ENTERTAINMENT, LLC,

Plaintiff,

v.

BC ENTERTAINMENT, INC., *et al.*,

Defendants.

Case No. 2:08-cv-0579-LDG (RJJ)

ORDER

BC ENTERTAINMENT, INC., *et al.*,

Counterclaimants,

v.

TRP ENTERTAINMENT, LLC,

Counterdefendant.

TRP Entertainment, LLC, the plaintiff/counterdefendant, alleges that the defendant's use of the marks "Rat Pack - Frank, Sammy, and Dean," "The Rat Pack A Tribute to Frank, Dean & Sammy," and "Rat Pack" infringes its registered mark "The Rat Pack is Back," and its common-law mark "The Tribute to Frank, Sammy, Joey, and Dean." Barrie Cunningham, the defendant/counterclaimant, counters with claims seeking a declaration

1 that "The Rat Pack" is generic and cannot be exclusively owned or registered by any party,
 2 that his marks do not infringe TRP's marks. Cunningham also seeks the cancellation or
 3 modification of TRP's registration of the "The Rat Pack is Back" mark.

4 Cunningham moves for partial summary judgment (#23) as to his claims that "The
 5 Rat Pack" is generic, that he has not infringed TRP's marks, and for the modification of
 6 TRP's registration of the "The Rat Pack is Back" mark. TRP opposes the motion (## 27,
 7 28).¹

8 Motion for Summary Judgment

9 In considering a motion for summary judgment, the court performs "the threshold
 10 inquiry of determining whether there is the need for a trial—whether, in other words, there
 11 are any genuine factual issues that properly can be resolved only by a finder of fact
 12 because they may reasonably be resolved in favor of either party." *Anderson v. Liberty*
 13 *Lobby, Inc.*, 477 U.S. 242, 250 (1986). To succeed on a motion for summary judgment,
 14 the moving party must show (1) the lack of a genuine issue of any material fact, and (2)
 15 that the court may grant judgment as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex*
 16 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

17 A material fact is one required to prove a basic element of a claim. *Anderson*, 477
 18 U.S. at 248. The failure to show a fact essential to one element, however, "necessarily
 19 renders all other facts immaterial." *Celotex*, 477 U.S. at 323.

20 "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after
 21 adequate time for discovery and upon motion, against a party who fails to make a showing
 22 sufficient to establish the existence of an element essential to that party's case, and on
 23

24 ¹ TRP has also moved for entry of a default (#48) against defendant BC
 25 Entertainment, Inc. Previously, the court has stricken the answer and counterclaim of BC
 26 Entertainment for failure to appear in this matter through counsel, as is required of a
 corporation. BC Entertainment has yet to have counsel appear on its behalf. Accordingly,
 the court will grant the motion for default.

1 which that party will bear the burden of proof at trial." *Id.* "Of course, a party seeking
2 summary judgment always bears the initial responsibility of informing the district court of
3 the basis for its motion, and identifying those portions of 'the pleadings, depositions,
4 answers to interrogatories, and admissions on file, together with the affidavits, if any,' which
5 it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S.
6 at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the
7 claim or defense that the motion for summary judgment places in issue, the moving party
8 can meet its initial burden on summary judgment "by 'showing'—that is, pointing out to the
9 district court—that there is an absence of evidence to support the nonmoving party's case."
10 *Celotex*, 477 U.S. at 325. Conversely, when the burden of proof at trial rests on the party
11 moving for summary judgment, then in moving for summary judgment the party must
12 establish each element of its case.

13 Once the moving party meets its initial burden on summary judgment, the non-
14 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.
15 56(e). As summary judgment allows a court "to isolate and dispose of factually
16 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the
17 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*
18 *Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,
19 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.*
20 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

21 Whether the term "The Rat Pack" is Generic

22 Cunningham seeks a declaration that the term "The Rat Pack" is a generic reference
23 to the members of the Rat Pack. As such, he contends that he may use the generic term
24 "The Rat Pack" as part of a title of a show in tribute to the members of the Rat Pack.
25 Further, as a generic term, he argues that TRP's trademark registration for "The Rat Pack
26 is Back" should be modified to disclaim the generic term "The Rat Pack."

1 In considering this question, the court must initially note that the specific question
2 presented by Cunningham is whether the term "The Rat Pack" is generic. Stated
3 otherwise, Cunningham has not asked the court to decide whether TRP's entire mark, "The
4 Rat Pack is Back" is generic. Rather, he seeks a ruling that a component of TRP's mark is
5 generic, and thus that TRP does not have an exclusive right to the use of the component.
6 To the extent that TRP has opposed Cunningham's motion by arguing that its entire mark,
7 "The Rat Pack is Back," is not generic, such argument is irrelevant. The issue is not
8 whether TRP has an exclusive right to use the mark "The Rat Pack is Back," but whether it
9 has an exclusive right to use the component term "The Rat Pack." *See, In re Save Venice*
10 *New York, Inc.*, 259 F.3d 1346, 1353 (Fed.Cir. 2001) ("A registered mark is incontestable
11 only in the form registered and for the goods or services claimed"); *In re National Data*
12 *Corp.*, 753 F.2d 1056, 1059 (Fed.Cir. 1985) ("registration affords prima facie rights in the
13 mark as a whole, not in any component").

14 Further, while TRP refers to its mark as the Rat Pack Mark, the registered mark is
15 not the term "Rat Pack," or the term "The Rat Pack," each of which is merely a component
16 of the entire mark: "The Rat Pack is Back." Thus, the court will consider TRP's arguments
17 regarding whether the term "The Rat Pack" is generic only to the extent that TRP's
18 arguments address whether the "The Rat Pack" component of its entire mark is or is not
19 generic.

20 "A 'generic' term is one that refers, or has come to be understood as referring, to the
21 genus of which the particular product or service is a species. It cannot become a
22 trademark under any circumstances." *Surgicenters of America, Inc. v. Medical Dental*
23 *Surgeries Co.*, 601 F.2d 1011, 1014 (9th Cir. 1979) (citing *Abercrombie & Fitch Co. v.*
24 *Hunting World, Inc.*, 537 F.2d 4, 9-10 (2nd Cir. 1976). The Ninth Circuit has often relied
25 upon the "who-are-you/what-are-you" test to determine whether a term is generic. *See*
26 *Filipino Yellow Pages, Inc. v. Asian Journal Publ'n, Inc.*, 198 F.3d 1143, 1147 (9th Cir.

1 1999). "A mark answers the buyer's questions 'Who are you?' 'Where do you come
2 from?' 'Who vouches for you?' But the [generic] name of the product answers the
3 question 'What are you?'" *Official Airline Guides, Inc. v. Goss*, 6. F.3d 1385, 1391 (9th Cir.
4 1993 (quoting 1 J. Thomas McCarthy, *Trademarks and Unfair Competition* §12.01 (3d ed.
5 1992)). "'A generic term is one that refers to the genus of which the particular product is a
6 species.'" *Committee for Idaho's High Desert, Inc. v. Yost*, 92 f.3d 814, 821 (9th Cir. 1996)
7 (quoting *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 194 (1985). "Genus is
8 the broader, more inclusive classification, while species are groupings within a given
9 genus." 2 McCarthy, §12:23 (4th ed. 2007).

10 Cunningham offers extensive evidence, undisputed by TRP, that the term "The Rat
11 Pack" is recognized by the consuming public as a reference to a group of entertainers:
12 typically identified as Frank Sinatra, Dean Martin, Sammy Davis, Jr., Joey Bishop, and
13 Peter Lawford. This group of entertainers, either in total or in various combinations,
14 appeared together in live stage performances and in movies during the 1960s. The
15 entertainers, themselves, did not generally identify themselves as the Rat Pack. Rather,
16 the reference appears to have been adopted by the popular media to refer to members of
17 the group, often in reference to their joint live (and often impromptu) show appearances.
18 Cunningham's evidence establishes that, subsequent to the 1960s, numerous and various
19 different types of products, including books, documentaries, movies, and compact disc or
20 DVD recordings (including recordings of joint performances from the 1960s), have used the
21 term "The Rat Pack" to identify that the underlying product concerns this group of
22 entertainers or is a recording of a joint entertainment performance involving this group of
23 entertainers.

24 As noted, from its initial use as a reference to this group of entertainers, the
25 entertainers did not use the term "The Rat Pack" to identify the origin of a good or service
26 offered by the group. Rather, "The Rat Pack" was a term used by other persons or entities

1 to refer to the group of entertainers, or to the activities of the group, or to indicate that an
2 offered service or good concerned this group of entertainers in some fashion.

3 TRP has not offered any evidence to the contrary. Rather, and at most, TRP has
4 merely argued that such evidence is irrelevant to whether its entire mark is a generic
5 reference to all live musical entertainment shows. TRP's argument, however, presents a
6 question that is irrelevant to Cunningham's motion. In the context of live musical
7 performances and TRP's show, "The Rat Pack" does not answer the question of "Who is
8 performing the live show?" The existing meaning of "The Rat Pack" as a reference to
9 members of the Rat Pack and their joint live performances of the 1960s establishes this.
10 The live show is not "The Rat Pack," nor would any consumer recognize the show as one
11 performed by "The Rat Pack" or by members of the Rat Pack. Rather, as suggested by
12 TRP's common-law mark, TRP's live entertainment show is a tribute to members of the Rat
13 Pack. At most, "The Rat Pack" informs the consumer that TRP's live show is about the
14 music and performances that the members of the Rat Pack jointly performed in the 1960s,
15 not that the show is "The Rat Pack."

16 Stated succinctly, Cunningham's evidence establishes that, long before TRP offered
17 live musical shows, the term the "The Rat Pack" had a meaning that was used in
18 connection with the joint performances of members of the Rat Pack during the 1960s.
19 While some of these performances included movie appearances, typically the joint
20 performances were live musical performances. Since the 1960s, the term "The Rat Pack"
21 has been used by producers of many types of goods or services to indicate that the goods
22 or services relates to members of the Rat Pack or to the joint movie or live (or recorded)
23 musical or movie performances of the Rat Pack during the 1960s. From its initial use to
24 refer to members of the group, particularly when jointly performing live musical
25 entertainment, "The Rat Pack" did not and, indeed, could not refer to or identify TRP's live
26 musical show.

1 By contrast, TRP has not offered any evidence that, in using the term "The Rat
2 Pack" in connection with its live musical show, it has deviated from this existing usage.
3 Rather, TRP's own common-law mark indicates that it adopted the term "The Rat Pack" to
4 draw upon consumers' association of the term with the Rat Pack. In the context of live
5 shows, "The Rat Pack" standing alone, answers only the question "What?" not "Who?"
6 "The Rat Pack" is not a reference to TRP's show, but a reference indicating that the live
7 musical show concerns or is about about the Rat Pack. The question before the court on
8 Cunningham's partial motion for summary judgment is not whether "The Rat Pack is Back"
9 identifies and distinguishes TRP's show in tribute to members of the Rat Pack from all
10 other such live shows. Rather, the only question is whether the component term "The Rat
11 Pack" so distinguishes TRP's live show from all others about or in tribute to the Rat Pack.
12 The evidence establishes that it does not and that TRP cannot appropriate the term "The
13 Rat Pack" for its exclusive use.

14 As the term "The Rat Pack" is generic in the context of live shows about or in tribute
15 to members of the Rat Pack, TRP does not have an exclusive right to use the term "The
16 Rat Pack." The mere fact that Cunningham has used the term "The Rat Pack" in
17 connection with a Rat Pack tribute show did not, does not, and cannot infringe TRP's
18 registered mark. The court cannot, however, agree with Cunningham that he is entitled to
19 a declaration that every use he makes of the component term "The Rat Pack" is non-
20 infringing. The present record does not permit the court to evaluate or consider
21 Cunningham's use of "The Rat Pack" in the context of a composite or compound term or
22 mark.

23 The remaining question before the court concerns the parties' tribute phrases. TRP
24 alleges in its complaint that it has a protected common-law mark in the phrase "The Tribute
25 to Frank, Sammy, Joey, and Dean." Cunningham argues the tribute phrase he uses, "A
26 Tribute to Frank, Dean, and Sammy," is generic. Cunningham further seeks a declaration

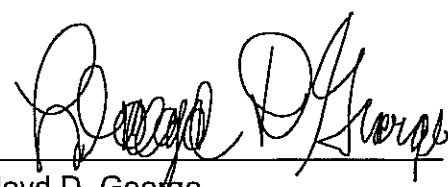
1 that his use of his tribute phrase does not infringe TRP's alleged mark because TRP has
2 not shown that it has a protected trademark interest in its tribute phrase. Further, even if
3 TRP has a protected interest, he argues that his use of a generic tribute phrase could not
4 infringe TRP's claimed mark. The record before the court requires the conclusion that
5 issues of material fact remain on these questions. Accordingly,

6 THE COURT **ORDERS** that TRP Entertainment, LLC.'s Motion for Entry of Default
7 Against Defendant BC Entertainment, Inc. (#48) is GRANTED.

8 THE COURT FURTHER **ORDERS** that Barrie Cunningham's Motion for Partial
9 Summary Judgment on Counterclaim for Declaratory Relief of Genericness, Counterclaim
10 for Modification of Plaintiff's Trademark Registration, and Counterclaim for Declaratory
11 Relief of Non-Infringement (#23) is GRANTED as to the First Counterclaim for Declaratory
12 Relief of Genericness and as to the Second Counterclaim to the extent the Second
13 Counterclaim requests Modification of TRP Entertainment, LLC.'s Trademark Registration
14 No. 2,640,066 to add a disclaimer of the term "RAT PACK;" and is DENIED in all other
15 respects as material issues of fact remain.

16 THE COURT FURTHER **ORDERS** that Barrie Cunningham shall prepare and
17 submit a proposed partial judgment.

18
19 DATED this 28 day of September, 2009.

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22 Lloyd D. George
23 United States District Judge
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**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

TRP ENTERTAINMENT, LLC, a Nevada
Limited Liability Company,

Petitioner,

vs.

DIRECT FROM VEGAS PRODUCTIONS,
INC., a California Corporation,

Respondent.

Cancellation No.: 92050557

Registration No: 3220387

Mark: DIRECT FROM VEGAS THE RAT PACK

FILED VIA ESTTA

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TRP ENTERTAINMENT, LLC,

Plaintiff,

v.

BC ENTERTAINMENT, INC., *et al.*,

Defendants.

Case No. 2:08-cv-579-LDG (RJJ)

ORDER

The counter-defendant, TRP Entertainment, LLC ("TRP") moves for reconsideration (#51) of this Court's order (#49) granting, in part, counterclaimant Barrie Cunningham's motion for partial summary judgment (#23). TRP also requests a hearing on its motion (#55). The court will deny both motions.

TRP's own arguments demonstrate that reconsideration is not appropriate. As TRP recognizes, a generic term "refers to the genus of which the particular product is a species." *Park 'N Fly, Inc., v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). As the product is a species of the genus, the generic term is, in the strictest sense, descriptive of the product. Such descriptiveness, however, extends not just to a specific product but to a broader range or group of products. As TRP also recognizes, some descriptive terms are capable of attaining a "secondary meaning" that indicates the origin of the product.

1 Generic terms, though descriptive, are incapable of attaining such a "secondary meaning."
2 Thus, as this court noted in its original order, the Ninth Circuit has often relied upon the
3 "who-are-you/what-are-you" test to determine whether a term is generic.

4 TRP argues that the generic meaning of "rat pack" is "[a] closely knit group of people
5 sharing interests," that was merely descriptive when initially applied to the group of
6 entertainers comprising Frank Sinatra, Dean Martin, Sammy Davis, Jr., Joey Bishop, and
7 Peter Lawford. The term gained a secondary meaning through the public's subsequent
8 use of the phrase to this group. Thus, while the entertainers were a "rat pack," the term
9 "Rat Pack" indicated a specific group of entertainers (comprised of Frank, Dean, Sammy,
10 Joey, and Peter) rather than a class of groups of entertainers.

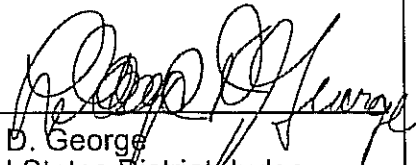
11 TRP's argument serves to establish that the term "Rat Pack" or "The Rat Pack" is
12 generic as to a class of musical tribute shows to Frank, Dean, Sammy, Joey, and Peter, of
13 which TRP's product is but one species. TRP does not seek a trademark in "rat pack," but
14 a trademark in "Rat Pack." The former descriptive term refers, as TRP argues, to a closely
15 knit group of people; the latter term references, pursuant to its existing secondary meaning,
16 a group of entertainers comprising Frank, Dean, Sammy, Joey, and Peter. While "rat pack"
17 is descriptive and capable of attaining secondary meaning, "Rat Pack" is descriptive but
18 incapable of attaining a further secondary meaning that identifies the source of the good or
19 service as a person or entity other than the group of entertainers comprising Frank, Dean,
20 Sammy, Joey, and Peter.

21 Accordingly,

22 THE COURT **ORDERS** that counter-defendant TRP's Motion for Reconsideration
23 (#51) is DENIED;

1 THE COURT FURTHER **ORDERS** that TRP's Request for Oral Argument on
2 Plaintiff's Motion to Reconsider Order (#55) is DENIED.

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4 DATED this 11 day of December, 2009.

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7 Lloyd D. George
8 United States District Judge
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**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

TRP ENTERTAINMENT, LLC, a Nevada
Limited Liability Company,

Petitioner,

vs.

DIRECT FROM VEGAS PRODUCTIONS,
INC., a California Corporation,

Respondent.

Cancellation No.: 92050557

Registration No: 3220387

Mark: DIRECT FROM VEGAS THE RAT PACK

FILED VIA ESTTA

EXHIBIT C

ORIGINAL

Barrie Cunningham
69 Ice Fall Ave.
Las Vegas, NV 89183-8507
Telephone: (702) 898-7542
Facsimile: (702) 898-7542

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CLERK OF DISTRICT COURT
DISTRICT OF NEVADA

In Pro Per

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRP ENTERTAINMENT, LLC,

Case No. 2:08-cv-0579-LDG (RJJ)

Plaintiff,

PARTIAL JUDGMENT

v.

BC ENTERTAINMENT, INC., *et al.*,

Defendants.

BC ENTERTAINMENT, INC., *et al.*,

Counterclaimants,

v.

TRP ENTERTAINMENT, LLC,

Counterdefendant.

The Court, having reviewed and considered the Motion for Partial Summary Judgment (Document #23) filed by Defendant/Counterclaimant Barrie Cunningham ("Cunningham"), the Opposition filed by Plaintiff/Counterdefendant TRP Entertainment, LLC ("TRP") (Documents #27 and 28), and Cunningham's Reply (Document #29), hereby enters the following partial summary judgment in favor of Cunningham on Cunningham's First Counterclaim for Declaratory Relief and on Cunningham's Second Counterclaim requesting Modification of TRP Entertainment, LLC's Trademark Registration No. 2,640,066 to add a disclaimer of the term "RAT PACK" consistent with this Court's Order

1 dated September 28, 2009 (Document No. 49):

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that partial summary
3 judgment be entered in favor of Barrie Cunningham as to Barrie Cunningham's First
4 Counterclaim for Declaratory Relief of Genericness;

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the term "The Rat
6 Pack" is generic in the context of live shows about or in tribute to members of the Rat
7 Pack;


8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the mere fact that
9 any third party uses the term "The Rat Pack" in connection with a Rat Pack tribute show
10 does not and cannot infringe TRP Entertainment, LLC's Trademark Registration No.
11 2,640,066 for "THE RAT PACK IS BACK";

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that TRP Entertainment,
13 LLC cannot appropriate the term "The Rat Pack" for its exclusive use;

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that partial summary
15 judgment be entered in favor of Barrie Cunningham as to Barrie Cunningham's Second
16 Counterclaim requesting Modification of TRP Entertainment, LLC's Trademark
17 Registration No. 2,640,066 to add a disclaimer of the term "RAT PACK;" and

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that, pursuant to 15
19 U.S.C. § 1119, the Director of the United States Patent and Trademark Office is hereby
20 ordered to rectify the Principal Trademark Register with respect to TRP Entertainment,
21 LLC's Trademark Registration No. 2,640,066 for the mark THE RAT PACK IS BACK by
22 entering a disclaimer upon said registration that NO CLAIM IS MADE TO THE
23 EXCLUSIVE RIGHT TO USE "THE RAT PACK" APART FROM THE MARK AS SHOWN.

24 **IT IS SO ORDERED.**

25 
26 UNITED STATES DISTRICT JUDGE

27 DATED: 19 May, 2011
28